

UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN  
NORTHERN DIVISION

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WILLIE DEBARDELABEN,

Plaintiff,

Case No. 2:11-cv-439

v.

Honorable R. Allan Edgar

RICHARD M. MCKEON, et al.,

Defendants.

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**MEMORANDUM AND ORDER**

U.S. Magistrate Judge Timothy P. Greeley has entered a Report and Recommendation (“R&R”) in this case, in which he recommended that Plaintiff’s First Amendment free exercise claim be dismissed. Doc. No. 55. Magistrate Judge Greeley found that remaining defendants Swajanen and Konrad were entitled to qualified immunity on that claim. Plaintiff’s complaint alleges a violation of his religious rights based on the application of a “zero-tolerance” policy that caused him to be removed from the Kosher diet in October, 2010.

Plaintiff has filed objections to the R&R. Doc. No. 60. This Court is required to make a de novo determination of those portions of the R&R to which objections have been filed, and may accept, reject, or modify any or all of the Magistrate Judge’s findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(a). In his objections, Plaintiff asserts Defendants are not entitled to qualified immunity because the Sixth Circuit had issued its opinion in *Colvin v. Caruso*, 605 F.3d 282 (May 2010) when he was removed from the Kosher diet. As Magistrate Judge Greeley noted in his R&R, the Sixth Circuit’s opinion questioned the constitutional validity

of the policy. At the time of Plaintiff's removal, the policy was not considered to be definitively in violation of the Constitution. Plaintiff's objections are without merit.

Defendants' motion for judgment on the pleadings [Doc. No. 47] is GRANTED. Magistrate Judge Greeley's R&R [Doc. No. 55] is APPROVED and ADOPTED as the opinion of the Court pursuant to 28 U.S.C. § 636(b)(1) and W.D. Mich. L. Civ. R. 72.3(b). Plaintiff's First Amendment claims are DISMISSED WITH PREJUDICE. This case remains pending as to Plaintiff's retaliation claims against Defendants Swajanen and Konrad.

SO ORDERED.

Dated: 3/27/2014

/s/ R. Allan Edgar  
R. Allan Edgar  
United States District Judge